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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/800,093 | 03/12/2004 | William G.F. Kelly | PPC-5053-USANP | 8092 |
| 27777 7590 03/27/2007 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003 | | | EXAMINER HAND, MELANIE JO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 03/27/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|-------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/800,093 | Applicant(s) KELLY, WILLIAM G.F. | |
| | Examiner Melanie J. Hand | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/26/06</u> . | 6) <input type="checkbox"/> Other: _____ |

.DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed January 8, 2007, with respect to the rejection of claims 1-27 under 35 U.S.C. 112 have been fully considered and are persuasive. The rejection has been withdrawn.

Applicant's arguments with respect to the rejection of claims 1-27 under 35 U.S.C. 103 have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on June 26, 2006 was filed after the mailing date of the Application on March 12, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Double Patenting

The provisional non-statutory double patenting rejection over copending Application No. 11/184,523 is maintained herein.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell in view of Goodman et al (WO 93/12749).

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With respect to **Claim 1**: Fell teaches absorbent article 10 comprising body side liner 12 (body facing cover layer) and absorbent core 16 adjacent liner 12. Core 16 has an intake of 15 seconds (Fig. 38-Control) and a rewet for said control core of between 0.37 - 0.54 g as determined by a test method that is substantially identical to that set forth in the disclosure. Fell does not teach a rewet that satisfies the limitation of claim 1. However applicant does not establish sufficient criticality for a rewet of less than 0.05 grams, therefore such a rewet amount is considered herein to be an optimization. It would be obvious to one of ordinary skill in the art to modify the core 16 taught by Fell so as to effect a rewet according to the method taught by Fell that is less than 0.05 grams, as less rewet is widely understood in the art to be a more desirable result and indicates improved absorbent material capacity and fluid handling characteristics. Fell teaches forming the body-side liner with an amount of titanium dioxide pigment of 6 wt% to give said liner a clean, whiter appearance (i.e. yields a percentage of pixels on the surface of said body-side liner that have a value of 255 for "white" according to the test method set forth by applicant). Titanium dioxide is also known in the art as a means for masking stains as it renders layers located behind a treated layer substantially invisible through said treated layer. Since Fell teaches only a 6 wt% amount of titanium dioxide, Fell teaches that the article will inherently have a small enough percentage of purely white pixels to mathematically yield a masking value of less than 115,000 according to the masking value computation method set forth in the instant application. The burden is herein upon applicant to show that the bodyside liner taught by Fell does not have a masking value of less than 115,000.

Fell does not teach that said bodyside liner 12 is an apertured film having an open area between about 20% and about 30%. Goodman teaches an apertured film 500 wherein the uppermost lamina 501 has a photoetched area (total area of boundaries and film material

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between apertures) percentage of about 65-95%, i.e. the open area percentage defines the remainder of the area, or between 5-35% of the total area of the lamina. Goodman teaches that this open area percentage reduces the glossy appearance of the film to produce a more fiber-like and tactile impression, as well as enhancing fluid transfer properties, therefore it would be obvious to one of ordinary skill in the art to modify the device of Fell so as to have a bodyside liner that is an apertured film with an open area percentage as taught by Goodman to provide a more fiber-like appearance and enhance fluid transfer properties.

With respect to **Claim 2**: Fell implicitly teaches a masking value less than 115,000, but does not teach a specific masking value (as the term is understood by the disclosure) that is less than about 100,000. However, applicant has not established sufficient criticality for the masking value range set forth in claim 2, therefore said range of values is considered herein to be an optimization of the masking value. The masking value is considered herein to be a result effective variable, as the masking value is determined by the amount of titanium dioxide present in the bodyside liner as taught by Fell, which alters its composition and its masking ability. Thus it would be obvious to one of ordinary skill in the art to increase the amount of titanium dioxide added to the liner 12 so as to achieve the masking values set forth in claim 2. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

With respect to **Claim 3**: Fell implicitly teaches a masking value less than 115,000, but does not teach a masking value less than about 90,000 (as the term is understood by the disclosure). However, applicant has not established sufficient criticality for the masking value range set forth in claim 3, therefore said range is considered herein to be an optimization. The masking value is

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considered herein to be a result effective variable, as the masking value is determined by the amount of titanium dioxide present in the bodyside liner, which alters its composition and its masking ability. Thus it would be obvious to one of ordinary skill in the art to increase the amount of titanium dioxide added to the liner 12 so as to achieve the masking values set forth in claim 3. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

With respect to **Claim 4**: Fell implicitly teaches a masking value less than 115,000, but does not teach a masking value less than about 85,000 (as the term is understood by the disclosure) in that range. However, applicant has not established sufficient criticality for the masking values set forth in claim 4, therefore said values are considered herein to be optimizations. The masking value is considered herein to be a result effective variable. As the masking value is determined by the amount of titanium dioxide present in the bodyside liner, which alters its composition and its masking ability. Thus it would be obvious to one of ordinary skill in the art to increase the amount of titanium dioxide added to the liner 12 so as to achieve the masking values set forth in claim 4. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

With respect to **Claim 5**: The average fluid penetration time of the article taught by Fell is less than 40 seconds. (Fig. 38-Control)

With respect to **Claim 6**: The average fluid penetration time of the article taught by Fell is less than 35 seconds. (Fig. 38-Control)

With respect to **Claims 7,8**: Fell teaches that absorbent core 16 is comprised of a first group of fibers 28 comprised of cellulosic pulp fibers (claim 8) and superabsorbent material 32 (claim 7).

With respect to **Claims 9, 17-19,23**: Fell teaches that core 16 is comprised of first absorbent layer 26 and second absorbent layer 24 comprised of an airlaid tissue laminate comprising a bottom layer of pulp, a middle layer of pulp and superabsorbent polymer and a top layer containing at least some pulp (taught by Fell directly and with reference to U.S. Patent No. 4,604,313) and having a basis weight in the range of 120-225 gsm.

With respect to **Claims 10-12, 22**: Fell teaches that the density of absorbent layer 24 is in the range of 0.06 – 0.4 g/cc. (§10108)

With respect to **Claim 13**: Fell teaches by reference to '313 a layer 24 having a middle layer that is further comprised of first middle layer adjacent said bottom layer of layer 24 and a second middle layer adjacent said top layer of layer 24.

With respect to **Claims 14-16,25**: Fell teaches that superabsorbent 32 is present in an amount between 0-85 wt%.

With respect to **Claims 24,26,27**: Fell teaches by reference to '313 that the thickness of layer 24 is 0.20 inches, or 5.8 mm, which does not fall in the range set forth by applicant, however applicant has not established sufficient criticality for the thickness range set forth, therefore such a range of values is considered an optimization of the thickness of layer 24. It would be obvious

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to one of ordinary skill in the art to modify the thickness of layer 24 so as to fall within the range set forth in claim 17, as ultra-thin absorbent products having thicknesses in this range are known in the art and are desirable as they are equally or more absorbent than thicker articles while also being more discreet.

With respect to Claim 28: Fell teaches a sanitary napkin 10 comprising: film cover layer 12, an absorbent system 16 adjacent said cover layer 12 for receiving liquid therefrom, said absorbent system 16 comprising a first absorbent layer 26 having a basis weight from about 80-1,000 gsm, which overlaps the range of 80 g/m² to about 110 g/m² (¶¶0191) and a second absorbent layer 24, said second absorbent layer having a basis weight in the range of 120-225 gsm, which overlaps the range of from about 150 gsm to about 350 gsm, which has been air-laid as a bottom layer of pulp, a middle layer of pulp intermixed with superabsorbent polymer, and a top layer containing at least some pulp. (¶¶0073,0107). Fell teaches a fluid impermeable garment facing layer 14. Fell teaches an average fluid penetration time of less than about 35 seconds (Fig. 38-Control) and an average rewet of less than about .05 grams according to the test procedure described in the disclosure.

The napkin taught by Fell inherently has a masking value of less than 115,000 but Fell does not explicitly teach having a masking value of less than about 85,000. However, applicant has not established sufficient criticality for the masking values set forth in claim 4, therefore said values are considered herein to be optimizations. The masking value is considered herein to be a result effective variable. As the masking value is determined by the amount of titanium dioxide present in the bodyside liner, which alters its composition and its masking ability. Thus it would be obvious to one of ordinary skill in the art to increase the amount of titanium dioxide added to the liner 12 so as to achieve the masking values set forth in claim 4. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or

workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

Fell does not teach that said bodyside liner 12 is an apertured film having an open area between about 20% and about 30%. Goodman teaches an apertured film 500 wherein the uppermost lamina 501 has a photoetched area (total area of boundaries and film material between apertures) percentage of about 65-95%, i.e. the open area percentage defines the remainder of the area, or between 5-35% of the total area of the lamina. Goodman teaches that this open area percentage reduces the glossy appearance of the film to produce a more fiber-like and tactile impression, as well as enhancing fluid transfer properties, therefore it would be obvious to one of ordinary skill in the art to modify the device of Fell so as to have a bodyside liner that is an apertured film with an open area percentage as taught by Goodman to provide a more fiber-like appearance and enhance fluid transfer properties.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

March 20, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

